

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ORRIS L. AVENT,

Petitioner,

9:05-CV-637  
(LEK)(DEP)

v.

E.R. CRAIG, Warden of FCI Ray Brook,

Respondent.

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APPEARANCES:

ORRIS L. AVENT  
Petitioner, *pro se*  
50491-083  
FCI Ray Brook  
P.O. Box 9001  
Ray Brook, NY 12977

LAWRENCE E. KAHN, U.S. DISTRICT JUDGE

**ORDER**

Orris Avent ("Avent" or "Petitioner") filed a Petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 with the Court on May 25, 2005. Docket No. 1. Said Petition was dismissed by Order of this Court filed June 3, 2005 ("June Order"). Docket No. 2. Presently before the Court is a Motion for Certificate of Appealability. Docket No. 5.

28 U.S.C. § 2253(c)(1) provides in relevant part:

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –  
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or  
(B) the final order in a proceeding under section 2255.

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2). After reviewing the

relevant portions of the file relating to this action, and for the reasons set forth in the June Order, the Court finds that the Petitioner has failed to make such a showing herein. Therefore, the Court denies his request.

However, when reviewing this file, the Court noted that the documents docketed by the Clerk as Petitioner's Notice of Appeal (Docket No. 4) are actually two separate documents; a Notice of Appeal and a Motion for Reconsideration/Motion to Amend Judgment. Accordingly, the Clerk will be directed to docket these documents separately, and return the Motion for Reconsideration/Motion to Amend Judgment to the Court for review.

WHEREFORE, it is hereby

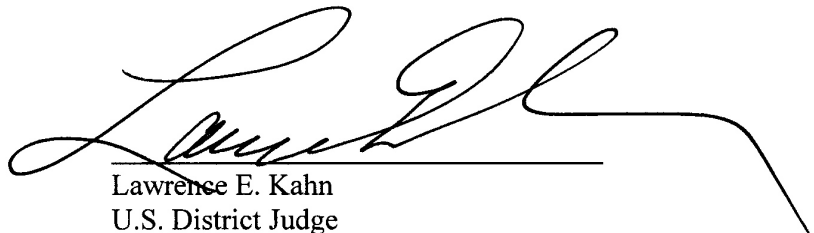
ORDERED, that the Clerk separately docket petitioner's Motion for Reconsideration/Motion to Amend Judgment, presently docketed as part of Docket No. 4, and then return that Motion to the Court for its consideration, and it is further

ORDERED, that petitioner's Motion for a Certificate of Appealability (Docket No. 5) is denied for the reasons set forth above, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order upon the Petitioner by regular mail.

IT IS SO ORDERED.

DATED: June 30, 2005  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge